

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KEVIN MERTENS,

Plaintiff,

v.

CITY OF SEATTLE, a municipal corporation in  
the state of Washington, and STATE OF  
WASHINGTON,

Defendants.

No. C04-1476MJP

ORDER VACATING THE CLERK'S  
ORDER OF DEFAULT AND  
GRANTING DEFENDANT STATE  
OF WASHINGTON'S MOTION TO  
DISMISS

This matter comes before the Court on Defendant State of Washington's ("State") motion for reconsideration of the Clerk's Order of Default (Docket No. 14) and to dismiss this action. (Docket No. 18). The State brings this motion under Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P 60(b). After reviewing all the relevant documents and pleadings and hearing oral argument on this matter, this Court finds it must VACATE the Court Clerk's Order of Default in favor of the Plaintiff because of excusable neglect on the part of the State of Washington, and DISMISS the case against the State without prejudice for lack of subject matter jurisdiction..

**Background**

Plaintiff Kevin Mertens ("Mertens") represented himself as a pro se defendant on remand after an initial appeal on a criminal conviction in the City of Seattle Municipal Court. The second trial court ruled against Mertens, and he appealed his claims to the Washington State Court of Appeals Division I and the Washington Supreme Court. Both appeals were denied. In a Complaint filed with this

1 Court against the City of Seattle and the State of Washington, Mertens claims that he was denied the  
2 right to properly defend himself and to compel witnesses to testify on his behalf. Additionally,  
3 Mertens claims that the Washington State Court of Appeals Division I and the Washington Supreme  
4 Court “failed to properly interpret state law to the extent that prejudicially restrains” him (Pl’s  
5 Complaint at 3).

6 The State failed to timely respond to Mertens complaint. Mertens filed a motion for default  
7 which was granted by the Court Clerk. The State now seeks to have this Court vacate the motion for  
8 default and dismiss all claims against it.

### 9 Analysis

#### 10 I. Order of Default

11 At oral argument on this motion, the State of Washington informed the Court that it had failed  
12 to respond to Plaintiff’s original complaint because it had interpreted the complaint as a petition for  
13 habeas corpus under 28 U.S.C. §2254. Accordingly, the State of Washington relied on Rule 5(a) of  
14 the Rules Governing Section 2254 Cases in the U.S. District Courts, which provides: “The  
15 respondent is not required to answer the petition unless a judge so orders.” In light of this rule, the  
16 Court finds that the cause for the State of Washington’s failure to answer Mr. Mertens complaint  
17 constituted “excusable neglect” under Fed. R. Civ. P. 60(b). For this reason, the Clerk’s Order of  
18 Default against the State is VACATED. Nonetheless, the State is advised that judicial economy  
19 would be better served if the State would share its evaluation of a case with the Court and other  
20 parties to that case in a formal answer or motion to dismiss when a case is filed as a normal civil  
21 action and not as a habeas action.

#### 22 II. Subject Matter Jurisdiction

23 The Supreme Court has held that “the Eleventh Amendment reflects ‘the fundamental  
24 principle of sovereign immunity [that] limits the grant of judicial authority in Art. III.” Seminole  
25 Tribe v. Fla., 517 U.S. 44, 64 (1996) (quoting Pennhurst State School and Hospital v. Halderman,  
26 465 U.S. 89, 97-98 (1984)). A federal court may only exercise Article III subject matter jurisdiction

1 over a state if the State has waived its immunity or the immunity has been abrogated by congress. See  
2 Welch v. Texas Dep't of Highways & Public Transp., 483 U.S. 468, 473 (1987). No such waiver or  
3 abrogation is present in this case. Thus, this Court does not have the requisite subject matter  
4 jurisdiction to hear the Mertens' claims against the State of Washington and must DISMISS without  
5 prejudice his case against the State.

### 6 **Conclusion**

7 The State of Washington has presented a valid basis for finding excusable neglect on its part  
8 under Fed. R. Civ. P. 60(b). Accordingly, the Court VACATES the Clerk of this Court's Order of  
9 Default against the State of Washington. Additionally, the sovereign immunity granted to the State of  
10 Washington by the Eleventh Amendment bars this Court from exercising subject matter jurisdiction in  
11 this case. For this reason, the Court DISMISSES without prejudice Mr. Mertens' claims against the  
12 State of Washington. In dismissing all claims against the State of Washington this Court does not  
13 reach the merit of Mertens' claims nor does it make any ruling in regard to Mertens' claims against  
14 the City of Seattle.

15 The Clerk of the Court shall direct a copy of this order be sent to all counsel of record.

16 Dated: April 8, 2005.

17 /s/ Marsha J. Pechman  
18 Marsha J. Pechman  
19 United States District Judge  
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